



## **Subject Index**

---

	<b>Page</b>
Introduction .....	1
Argument .....	2
Conclusion .....	5

## **Table of Authorities Cited**

---

<b>Cases</b>	<b>Pages</b>
Housing Authority v. Superior Court, 35 Cal.2d 550, 219 Pac.2d 457 (1950) .....	4
Hunter v. Erickson, 393 U.S. 385 .....	2, 3, 4, 5
Reitman v. Mulkey, 387 U.S. 369 (1967) .....	3, 4

## **Constitutions**

California Constitution:	
Article 34, Section 1 .....	3, 4, 5

## **Rules**

Supreme Court Rules:	
Rule 16(4) .....	1



**In the Supreme Court**  
**OF THE**  
**United States**

---

OCTOBER TERM, 1969

---

No. 1557

---

RONALD JAMES, et al.,

*Appellants,*

vs.

ANITA VALTIERRA, et al.,

*Appellees.*

**On Appeal From the United States District Court**  
**Northern District of California**

**APPELLANTS' BRIEF IN OPPOSITION TO MOTION TO AFFIRM**

---

**INTRODUCTION**

Appellants, Ronald James, Joseph Colla, Walter V. Hays, David J. Goglio, Kurt Gross and Norman Y. Mineta, respectfully file this memorandum in opposition to appellees' Motion to Affirm. This memorandum is filed pursuant to Rule 16(4) of the Supreme Court Rules.

These appellants have stated in their Jurisdictional Statement that the decision below is incorrect. In

summary fashion, the Jurisdictional Statement at page 15, says in part, "The case of *Hunter v. Erickson*, 393 U.S. 385 . . . is, nevertheless distinguishable, and should be distinguished, on its facts. The decision below is an overly broad application of the principles enunciated by the Supreme Court in *Hunter*, and is not justified by the decision in that case." It shall be the attempt of this memorandum to state briefly in what way *Hunter* is different from the instant case and why it should be distinguished.

---

### ARGUMENT

Preliminarily, it should first be noted that at least one claim of appellees must be challenged at this time as incorrect. They have stated at page 7 of their Motion to Affirm, "Appellants have offered no legislative objective at all which requires the imposition of the referendum burden." Probably, the heart of appellants' attack upon the decision below involves this very point. Part of the appellants' assertion was made in their memorandum in support of their Motion to Dismiss, filed in the Court below. At page 3 of the memorandum, appellants listed several problems to be solved for the purpose of showing the local nature of the issues raised by a decision whether or not to have low-rent housing in a given community (planning, redevelopment, zoning, property tax revenues, school facilities, police protection, fire protection, streets, sewers and drains—not to mention bonded indebtedness limits, existing public housing, other capi-

tal needs). These very same legislative objectives or considerations, except for Article 34, would be the exclusive, justifiable and foremost considerations with which any local public entity would be faced while trying to decide the housing question. All Article 34 adds to change this situation is the requirement that such decision be shared with "a majority of the qualified electors of the city, town or county, as the case may be, in which it is proposed to develop, construct, or acquire" the low-rent housing (Article 34, § 1). To the above-mentioned considerations, appellants have added the importance of, and the constitutional and legislative justification for, allowing qualified electors to share in the legislative process on such an issue (Jurisdictional Statement, p. 14).

Returning to the differences between *Hunter* and the case at hand, we find the Akron charter provision in *Hunter*, far more akin to the State Constitutional provision found in *Reitman v. Mulkey*, 387 U.S. 369 (1967), than it is to Article 34. The following are illustrative of this point:

1. Both the California Constitution in *Reitman* and the Akron charter provision in *Hunter* pertained expressly to discrimination on racial, religious or ancestral grounds. Article 34 pertains to none of these matters. Neither does it address itself to, nor permit discrimination, any more so than any other voting process;

2. *Hunter*, like *Reitman*, can be explained on the ground that the offensive legislation amounted to "state action" in that the Akron charter provision

would have lent official sanction to private discrimination. Article 34 does nothing more than to allow voters to do what the law would otherwise permit the local governing body to do alone;

3. Unlike the Akron charter provision in *Hunter*, and the State Constitution in *Reitman*, Article 34 repealed no valid existing law intended to prohibit discrimination;

4. Both the Akron charter provision in *Hunter* and the State Constitution in *Reitman*, dealt with limitations upon the governing bodies in question to pass legislation. Article 34 does not concern itself with legislation. Instead, it deals merely with the administrative decision to acquire or not to acquire public housing. Certainly, the legislative process of law-making is much more precious. Anything limiting or hampering that process deserves much more scrutiny than does a provision like Article 34 which deals only with a matter which is primarily of *fiscal* significance; and

5. In *Hunter*, the legislation dealt with by the Akron charter provision was of the type which the electorate could have reviewed at any time under the general referendum and initiative procedures (393 U.S. at 392-93). Article 34, on the other hand, was designed to fill a gap which the California Supreme Court created when it ruled that in Eureka, California, the City Charter did not permit referendum review of a decision to acquire public housing. As the Court said, the decision was "administrative" rather than "legislative", *Housing Authority v. Superior Court*, 35 Cal.2d 550, 219 Pac.2d 457 (1950), and the

Charter's referendum power was held to permit review only of the City's legislative decisions.

*Hunter* is the only case so far in which this Court has ruled that an "automatic" referendum requirement was unconstitutional. Given the facts and circumstances surrounding that case, the opinion is right and justified. But to allow the language of the *Hunter* opinion to be broadly applied as the District Court below and the appellees would have this Court do, would virtually strike down any and all such requirements anywhere and for any purpose. The result would remove the government, and its correlative responsiveness, one giant step further from the control and desires of its people.

---

### CONCLUSION

Appellants respectfully submit that neither this Court nor the framers of the United States Constitution ever intended such a devastating infringement upon the right of the people to govern themselves. Article 34 is very similar in purpose and scope to bond elections, the validity of which have been upheld time and again. It is, therefore, respectfully requested that these appellants be given the full opportunity to deal with and to expand upon these most important issues in full, plenary fashion.

Dated, May 20, 1970.

Respectfully submitted,  
DONALD C. ATKINSON,  
*Attorney for Appellants.*